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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,459	07/14/2005	Ludwik Leibler	FR-AM1914 NP	2641
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ARKEMA INC. PATENT DEPARTMENT - 26TH FLOOR 2000 MARKET STREET PHILADELPHIA, PA 19103-3222				
EXAMINER				
MULLS, JEFFREY C				
ART UNIT		PAPER NUMBER		
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02/12/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/542,459

Applicant(s)

LEIBLER ET AL.

Examiner

Jeffrey C. Mullis

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-11, 15 and 16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 15 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

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Claims 1-11, 15 and 16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not disclose how to make applicants block copolymers having the recited specific level of syndiotacticity and since there are various choices and levels of stereoregularity possible from any polymerization it is not clear what process could be used to make applicants block copolymer component of claim 1.

Claims 5, 6 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The plural "methyl methacrylates" is unclear in that there is only one material call methyl methacrylate.

Claim 10 is unclear in that "polyamides" are recited despite claim 1 from which this claim depends already recites polyamide.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to

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be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5, 6, 7-11, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruzette et al. (CA 2473791)

Ruzette discloses a composition containing greater than 50% matrix polymer such as polyamide in combination with a block copolymer such as triblock copolymer (claims 5 and 26). Note the examples where the block copolymer is a triblock copolymer with terminal PMMA blocks and non terminal polybutyl acrylate blocks. While no actual examples of applicants composition are present in the document, to arrive at applicants composition by selecting from the various disclosures of the reference would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention in the expectation of adequate results absent any showing of surprising or unexpected results.

The reference provides examples of PMMA-polyacrylate block copolymer production and therefore a particular level of stereoregularity can properly be said to be inherent in the Examples of the prior art. Note Everaerts ('521) at paragraphs 55 and 115 disclosing use of living free radical techniques and production of syndiotactic PMMA. Note Everaerts '881 at paragraphs 10 and 86 for a similar disclosure.

Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

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It is noted that the above document corresponds to (US 2006/0063891), cited of interest.

The terminal disclaimer filed on 2-4-08 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 10/502,216 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claims 1-11, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kakeda et al. (WO 200292696).

It is noted that the above patent corresponds to US 2004/0147674 which will be referred to as the US publication is in English.

Examples 3, 4 and 5 on page 24 disclose applicants composition except that Kakeda uses somewhat less polyamide than applicants. Note that paragraph 22 of Kakeda discloses that higher amounts of thermoplastic may be used. With re to applicants characteristic in claim 1, While no actual examples of applicants composition are present in the document, to arrive at applicants composition by selecting from the various disclosures of the reference would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention in the expectation of adequate results absent any showing of surprising or unexpected results.

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The reference provides examples of PMMA-polyacrylate block copolymer production and therefore a particular level of stereoregularity can properly be said to be inherent in the Examples of the prior art. Note Everaerts ('521) at paragraphs 55 and 115 disclosing use of living free radical techniques and production of syndiotactic PMMA. Note Everaerts '881 at paragraphs 10 and 86 for a similar disclosure.

Claims 1-11, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuji et al. (WO 200281561).

It is noted that the above patent corresponds to US 2004/0106732 and since this publication is in English it will be referred to.

Tsuji discloses a composition produced by compounding a thermoplastic and an acrylate/methacrylate block copolymer (Abstract) such as applicants specific triblock (paragraph 154) in which the thermoplastic may include polyamide in applicants amounts (paragraphs 32 and 33). Butadiene may be present at paragraph 85 and rubber may be added in paragraphs 213-214.

While no actual examples of applicants composition are present in the document, to arrive at applicants composition by selecting from the various disclosures of the reference would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention in the expectation of adequate results absent any showing of surprising or unexpected results.

The reference provides examples of PMMA-polyacrylate block copolymer production and therefore a particular level of stereoregularity can properly be

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said to be inherent in the Examples of the prior art. Note Everaerts ('521) at paragraphs 55 and 115 disclosing use of living free radical techniques and production of syndiotactic PMMA. Note Everaerts '881 at paragraphs 10 and 86 for a similar disclosure.

Applicant's arguments filed 1-21-08 have been fully considered but they are not persuasive.

Applicants argument that those skilled in the art would know how to manipulate reaction conditions to control the level of syndiotacticity is merely conclusionary.

Applicants argue that the polyamide of claim 10 is not the same as that of claim 1. However there is nothing in claim 10 indicating that the same polyamide as that of claim 1 can not be added to the composition of claim 1.

Applicants arguments regarding the prior art rejections rest entirely on their characteristic added to claim 1 in their response. However, all 3 references relied upon provide examples of PMMA-polyacrylate block copolymer production and therefore a particular level of stereoregularity can properly be said to be inherent in the Examples of the prior art. Note Everaerts ('521) at paragraphs 55 and 115 disclosing use of living free radical techniques and production of syndiotactic PMMA. Note Everaerts '881 at paragraphs 10 and 86 for a similar disclosure. Note MPEP 2112 section IV which

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states

V. ONCE A REFERENCE TEACHING PRODUCT APPEARING TO BE SUBSTANTIALLY IDENTICAL IS MADE THE BASIS OF A REJECTION, AND THE EXAMINER PRESENTS EVIDENCE OR REASONING TENDING TO SHOW INHERENCY, THE BURDEN SHIFTS TO THE APPLICANT TO SHOW AN UNOBVIOUS DIFFERENCE

"[T]he PTO can require an applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of his [or her] claimed product. Whether the rejection is based on inherency' under 35 U.S.C. 102, on *prima facie* obviousness' under 35 U.S.C. 103, jointly or alternatively, the burden of proof is the same...[footnote omitted]." The burden of proof is similar to that required with respect to product-by-process claims. *In re Fitzgerald*, 619 F.2d 67, 70, 205 USPQ 594, 596 (CCPA 1980) (quoting *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433-34 (CCPA 1977)).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication should be directed to Jeffrey
C. Mullis M-F, 9-5 pm at telephone number 571 272 1075.

Jeffrey C. Mullis
Primary Examiner
Art Unit 1796

/Jeffrey C. Mullis/

Primary Examiner, Art Unit 1796